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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN ROZEN

Appeal 2008-3265
Application 09/757,745
Technology Center 2100

Decided: January 5, 2009

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY, III, and
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-3, 5, 6, 8, and 10-14. Claims 4, 7, and 9 have been cancelled. The Appellant appeals therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing for this appeal was conducted on December 11, 2008.

INVENTION

The invention at issue on appeal "causes a [client's] browser to connect to the closest available content server without having to know in advance the address of that content server." (Spec. 8.) More specifically, the invention groups servers that share content and relies on the cooperation of the routers between the client and the servers to resolve which server is the closest available one. (*Id.*)

ILLUSTRATIVE CLAIM

6. A content delivery system comprising:
 - an autonomous system including a first content server and a second content server having content in common with said first content server;
 - an origin server separate from the autonomous system for providing an address to a client in response to a request for content, the address identifying said autonomous system;
 - a first router for relaying messages to said first content server;
 - and
 - a second router for relaying messages to said second content server.

PRIOR ART

Hasebe	6,212,570	Apr. 3, 2001
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W. Richard Stevens et al, *TCP/IP Illustrated, Volume I: The Protocols* 138-39 (Addison-Wesley Pub. Co.1994)

REJECTIONS

Claims 1-3, 6, and 10-13 stand rejected under 35 U.S.C. § 102(e) as anticipated by Hasebe.

Claims 5, 8, and 14 stand rejected under 35 U.S.C. § 103(a) as obvious over Hasebe and Stevens.

ISSUE

"Rather than reiterate the positions of the parties *in toto*, we focus on an issue therebetween." *Ex parte Kuruoglu*, No. 2007-0666, 2007 WL 2745820, at *2 (BPAI 2007). The Examiner finds that "Hasebe teaches . . . an origin server (network exchange device 20) . . ." (Answer 12.) The Appellant argues that "[a]s described in *Hasebe*, the NED's 20 and 40 are essentially routers. They cannot carry out the functions characteristic of an origin server." (Reply Br. 4.) Therefore, the issue before us is whether the Appellant has shown error in the Examiner's finding that Hasebe's network exchange device 20 constitutes an origin server.

LAW

"Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc).

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability." *In*

re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992). "[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim" *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

FINDINGS OF FACT ("FFS")

1. The Appellant discloses that "[t]o retrieve a web-page, a user typically provides, to a web-browser running on that user's computer, a URL (uniform resource locator) identifying an origin server that contains the desired web-page." (Spec. 1.) "After having learned the I[n]ternet P[rotocol] address for the origin server, the web-browser sends that origin server a message requesting the desired web-page. In response, the origin server sends the desired web-page to the web-browser." (*Id.*)

2. Hasebe discloses an "information distribution device selection system for selecting one information distribution device on an inter-connected communication networks formed by a plurality of communication networks, which provides an [sic] information in response to a request from a user terminal device" (Col. 3, ll. 63– 67.)

3. Figure 7 of Hasebe shows communication network exchange device 20 and communication network exchange devices 40A-C.

4. "The communication network exchange device 40 is essentially an element for controlling a route at a time of transmitting the information" (Hasebe, Col. 7, ll. 58-60.) "The communication network exchange device 40 . . . has a function for constantly exchanging routing information with the other communication network exchange devices 40 and *controlling a route* between the user terminal device 10 and the information distribution device 60." (Hasebe, Col. 8, ll. 23-30 (emphasis added)).

5. Persons of ordinary skill in the art would have known that routers maintain tables showing routes.

ANALYSIS

The independent claims on appeal recite in pertinent part "an origin server." The Appellant's Specification explains that an origin server may contain a desired web-page and that it sends the desired web-page to a web-browser upon request. (FF 1.) Reading the independent claims in view of the Specification, we agree with the Appellant that these claims require a "server that maintains web pages for delivery upon request" (Reply Br. 4) and that is "capable of returning a requested web page if it were appropriate to do so" (*id.*).

"*Hasebe* does not discuss the devices 20A-C in detail" (Supp. Appeal Br.¹ 10) including whether the devices 20A-C maintain web pages for

¹ We rely on and refer to the Supplemental Appeal Brief in lieu of the original Appeal Brief, because the latter was defective. We have not considered the original in deciding this appeal.

delivery upon request or are capable of returning a requested web page. Furthermore, the Examiner does not allege, let alone meet his burden of showing, that the communication network exchange device 20 (or the communication network exchange devices 40A-C) maintains web pages for delivery upon request or is capable of returning a requested web page.

For its part, the communication network exchange device 40 is essentially an element for controlling a route at a time of transmitting information. (FF 4.) Consequently, we agree with the Appellant that the communication network exchange devices 40A-C "are essentially routers." (Reply Br. 3.)

We also agree with the Appellant's following conclusions.

"[Because] *Hasebe* uses the term "network exchange device" to refer to both network exchange devices 20 communicating with user terminal 10 and network exchange devices 40 communicating with the information distribution devices 60, it is reasonable to infer that the network exchange devices 20 and 40 carry out identical functions. Thus, it is difficult to avoid the inference that the network exchange device 20 . . . is structurally and functionally identical to the network exchange devices 40

(*Id.*) Because the communication network exchange device 40 is essentially a router, and the network exchange device 20 is structurally and functionally identical to the network exchange devices 40, the communication network exchange device 20 is also essentially a router.

The Examiner explains that "[d]evice 20A shows a table identifying the route for content server 60A (IP address 192.0.0.1)" (Answer 17.) Routers maintain tables showing routes. (FF 5.) Such an explanation supports the finding that the communication network exchange device 20 is essentially a router. The Examiner does not allege, let alone show, that Hasebe's routers maintain web pages for delivery upon request, or are capable of returning a requested web page.

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellant has shown error in the Examiner's finding that Hasebe's network exchange device 20 constitutes an origin server. The absence of an origin server negates anticipation. The Examiner does not allege, let alone show, that the addition of Stevens cures the aforementioned deficiency of Hasebe.

ORDER

We reverse the rejections of claims 1-3, 5, 6, 8, and 10-14.

REVERSED

msc

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